IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8718 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHUPATBHAI BACHUBHAI GAJERA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 8718 of 2000

MS SUDHA R GANGWAR for Petitioner No. 1

MR NK MAJMUDAR for Respondent No. 1-2

..... for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/04/2002

ORAL JUDGEMENT

The present petition is filed by the petitioner for quashing and setting aside the supplementary bill dated 28.7.2000 amounting to Rs.2,34,567.82ps.

2. Heard Ms.Sudha Gangwar for the petitioner and Mr.N.K.Majmudar for the respondent-Board.

3. Ms.Gangwar for the petitioner submitted that the appellate authority found that it is not a case of theft and thereafter observed that it will be for the concerned officer of the Gujarat Electricity Board, namely, Chief Engineer(Distribution) of the respondent-Board to take final decision in the matter. She submitted that after such order passed by the appellate authority, straight away the Chief Engineer (Distribution) has issued supplementary bill in question. She submitted that no opportunity of hearing was given nor the matter is examined on the point as to whether the average of the subsequent period should be made applicable to the period in question or not. As per her contention, the payment of regular bill is already made and therefore merely because the meter is burnt without there being any positive evidence on record regarding the consumption of electricity energy supplementary bill should not have been issued by the respondent Board.

4. On behalf of the respondent Board, Mr.Majmudar submitted that since the meter was burnt, on the front portion of the meter meter the reading was not reflected and therefore the supplementary bill is issued on the basis of average of last six months period and he submitted that since the meter was burnt it was not possible for the respondent Board to find out the actual consumption and therefore by taking average consumption for the period from 26.4.1999 to 24.11.1999 supplementary bill has been issued taking the aforesaid as the basis for the average for the period from July 1998 to November 1999. Mr.Majmudar submitted that pursuant to the interim order passed by this court the petitioner has deposited amount of Rs.58,650/- and the electricity is reconnected. However, he submitted that pending the petition the petitioner is attempting to transfer the property and if the property is transferred it will be difficult for the respondent Board to recover the money from the purchaser and therefore he submitted that the petitioner has no bonafide intention and Mr.Majmudar supported the supplementary bill issued by the Board.

5. Taking into consideration the aforesaid rival contentions of the parties and the facts of the present case it appears that as found by the appellate authority it is not a case of theft but it is a case of issuance of supplementary bill on the basis of average consumption

recorded. However, the average which is taken as the basis is for the period from 26.4.99 to 24.11.1999 whereas the bill has been issued for the period from July 1998 to November, 1999. The supplementary bill in question has been issued on the basis that three times meters were installed and they are burnt and therefore since the correct reading of the meter could not be detected and the average has been applied. However, the Chief Engineer (Distribution) has not given any opportunity of hearing to the petitioner to putforward the details regarding the actual consumption could have been for the period during which the meter was burnt. Further, it appears that the Chief Engineer (Distribution) has also not taken into consideration the relevant aspects of the case that it could be for the subsequent period the consumption will be made and that if the average of subsequent period is applied as yardstick the same can not be a valid reason if the petitioner or the person concerned proves by documentary evidence that the actual consumption was less than the average. All these aspects will have to be examined by the competent authority considering the record, but it appears that the Chief Engineer (Distribution) has not examined the said aspect and therefore considering the facts and circumstances of the case I am of the view that the following directions would meet with the ends of justice:

(i) The petitioner shall make a detailed representation to the General Manager (Commerce) of the Gujarat Electricity Board who is above the Chief Engineer (Distribution) within a period of four weeks from today showing the circumstances with the documentary proof, if any, regarding actual consumption of the electricity power for the period for which the supplementary bill has been issued.

(ii) If such representation, as stated above, is made by the petitioner, the General Manager (Commerce) shall consider the facts and circumstances as well as the record of the case, and after giving opportunity of hearing to the petitioner shall take the decision within a period of three months thereof.

(iii) Until the decision is taken by the General Manager (Commerce) as observed above the interim relief granted by this court shall continue with further rider that the petitioner shall not make any endeavour to transfer or alienate the property.

(iv) If the representation is not made by the petitioner within a period of one month from today, as observed earlier, the interim relief shall automatically stand vacated.

6. Ms.Gangwar submitted that if the petitioner deposits the full amount of supplementary bill and other incidental charges etc the petitioner may be permitted to transfer the property in question. I think that if the amount of the bill is deposited normally the Board should not have any objection for transfer of the property, but since the same is not the subject matter of this petition, I am not dealing with the same, but at the same, it will be open to the petitioner to apply to the concerned officer for grant of permission to transfer the property upon depositing the full amount of supplementary bill, other incidental charges etc and if such application is made, same shall be considered in accordance with law.

7. In view of the above, no further orders are required to be passed. Rule is made absolute accordingly to the aforesaid extent. There shall be no order as to costs.

19.4.2002 (JAYANT PATEL,J)